HOCK HIN BROS. SDN. BHD.

v.

LOW YAT HOLDINGS SDN. BHD.

HIGH COURT MALAYA, PENANG
EDGAR JOSEPH JR J
[CIVIL SUIT NO. 268 OF 1983]
26 SEPTEMBER 1983

LAND LAW: *Private caveat - Application to remove subsequent caveat lodged after earlier caveat had been removed by the Registrar of Titles - Subsequent caveat lodged by same person to protect same claim on same grounds.*

The plaintiff company lodged a private caveat after its earlier caveat had been removed by the Registrar of Titles pursuant to the provisions of s. 326(3) of the National Land Code. The subsequent caveat was to protect the same claim as the earlier caveat and was based on the same grounds. The defendant company applied to remove it.

Held:

[1] If a caveat was removed by an order of Court, s. 329(2) of the National Land Code operates to prevent a further caveat from being lodged which is based on the like claim as the earlier caveat.

[2] If a caveat was removed pursuant to an administrative act of the Registrar of Titles, a subsequent caveat to protect the same claims based on the same grounds can be lodged.

[3] Section 175 of the former Land Code (Cap. 138) which expressly prohibited further caveats by the same person in the same matter has no place in the National Land Code.

[Application dismissed.]

Cases referred to:

Hong Keow Tee & Anor. v. Alkhared & Khoo Holdings Sdn. Bhd. [1982] 2 MLJ 42
Damodaran v. Vasudevan [1974] 1 MLJ 128
Arul Chandran v. Tara Rajaratnam [1979] 2 MLJ 172
Forster v. Baker [1910] 2 KB 636
Green v. Berliner [1936] 2 KB 477
Police Authority for Huddersfield v. Watson [1947] KB 842
Alma Shipping Co. v. Salgaoncar [1954] 2 QB 94
K.I. Muhiudeen Rawther v. K.E.P. Abdul Kassim & Ors. [1959] MLJ 257

Legislation referred to:

Land Code (Cap 138), s. 175
National Land Code 1965, ss. 326(3), 329(2)

For the applicant/defendant - P. Navaratnam; M/s. Chang & Vello
For the respondent/plaintiff - Gan Teik Chee; M/s. Gan Teik Chee & Ho

JUDGMENT

Edgar Joseph Jr J:

At the conclusion of the arguments I dismissed this application by Summons-in-Chambers by the defendant company, praying for removal of caveat lodged by the plaintiff company in respect of certain land, the subject of the suit herein, and said that I would give my reasons for decision, which I now do.

The short but ever recurring and important point of law raised was whether, where a caveat was in existence, but has been removed by the Registrar of Titles pursuant to the provisions of s. 326(3) of the **National Land Code,** any further caveat may be lodged by the same person to protect the same claim on the same grounds?

In *Hong Keow Tee & Anor. v. Alkhared & Khoo Holdings Sdn. Bhd.* [1982] 2 MLJ 42, Arulanandom J answered this question in the negative, relying on *Damodaran v. Vasudeva*n [1974] 1 MLJ 128 and *Arul Chandran v. Tara Rajaratnam* [1979] 2 MLJ 172, 174. I regret I found myself unable to agree with him. I recognised that Judges sitting alone, whether in civil or criminal proceedings, and whether exercising original or appellate jurisdiction, are not bound by each other's decisions (*Forster v. Baker* [1910] 2 KB 636, 638, per Bray J; *Green v. Berliner* [1936] 2 KB 477, 493, per Du Parcq J; *Police Authority for Huddersfield v. Watson* [1947] KB 842, 848, per Lord Goddard CJ; *Alma Shipping Co. v. Salgaoncar* [1954] 2 QB 94, 104, per Devlin J) though judicial courtesy requires that they do not lightly dissent from the considered opinions of their brethren. It was with these considerations in mind that I had approached the task of answering the question of law posed.

The only provision that prohibits an application for entry of a further caveat based on the like claim as that on which the former one was based is s. 329(2) of the **National Land Code,** which explicitly provides:

> Where the Court has ordered the removal of any private caveat under s. 327, or has refused an application under sub-section (2) of s. 326 for an extension of time with respect to any such caveat, the Registrar shall not entertain any application for the entry of a further caveat in respect of the land or interest in question if it is based on the like claim as that on which the former one was based.

In the instant case, the former caveat was removed not pursuant to any order of Court but pursuant to the administrative act of the Registrar of Titles acting under s. 326(3) of the **National Land Code**. It seemed to me, with all due respect, that all the learned Judges in the local cases cited were unduly swayed by the decision of H.T. Ong J (as he then was) in *K.I. Muhiudeen Rawther v. K.E.P. Abdul Kassim & Ors.* [1959] MLJ 257 and his observation therein that "once a caveat has lapsed and a memorial is made by the registering authority it is extinguished for ever."

A careful reading of the judgment of H.T. Ong J in that case will show that it turned on a true construction of certain provisions of the former Land Code (Cap. 138) which bear no resemblance to the equivalent provisions in the **National Land Code**. Specifically, s. 175 of the **Land Code** which expressly prohibited further caveats by the same person in the same matter finds no place in the **National Land Code** and, conversely, there was no provision in the former equivalent to s. 329(2) in the latter. I accordingly held that the decision of Arulanandom J in *Hong Keow Tee's* case (*supra*) was given *per incuriam* in

that he overlooked relevant statutory provisions, more particularly, vital differences in the wording of the relevant provisions in the former **Land Code** and the **National Land Code** to which I have just adverted, and was accordingly a decision I should refuse to follow.

If I may be pardoned for saying so, this case illustrates how, under the pressures of practice and overcrowded judicial lists, a line of authorities may gradually grow in the wrong direction because important statutory provisions have escaped attention.

It was for the above and other reasons that I dismissed this application.

Also found at [1983] 2 CLJ 263